

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>FRANK ROBERT CHESTER,</b> <i>et al.,</i>	:	
	:	
<b>Plaintiffs</b>	:	<b>No. 1:08-CV-1261</b>
	:	
<b>v.</b>	:	<b>(Chief Judge Kane)</b>
	:	
<b>JEFFREY A. BEARD, et al.,</b>	:	<b>(Electronically Filed)</b>
<b>Defendants</b>	:	

**DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

Defendants, **JEFFREY A. BEARD, Ph.D.,** and **FRANKLIN J. TENNIS**, by their attorneys, hereby respectfully move the Court to dismiss the complaint:

1. Pursuant to Fed.R.Civ.P. 12(b)(1), because the court lacks jurisdiction over the subject matter; and
2. Pursuant to Fed.R.Civ.P. 12(b)(6), because the complaint fails to state a claim for which relief may be granted.


As will be set forth in more detail in the brief in support of this motion, the Court should dismiss this matter because there is no live case or controversy. Alternatively, the Court should dismiss the complaint because it does not present any actionable claim.

WHEREFORE, the Court should dismiss the complaint.

Respectfully submitted,

**THOMAS W. CORBETT, JR.**  
Attorney General

**RICHARD A. SHEETZ, JR.**  
Executive Deputy Attorney General  
Director, Criminal Law Division

By:   
\_\_\_\_\_  
**AMY ZAPP**  
Chief Deputy Attorney General  
Appeals and Legal Services Section  
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**Counsel for DEFENDANTS**

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**DATE: October 3, 2008**

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>FRANK ROBERT CHESTER,</b>	:	
<i>et al.,</i>	:	
<b>Plaintiffs</b>	:	<b>No. 1:08-CV-1261</b>
	:	
<b>v.</b>	:	<b>(Chief Judge Kane)</b>
	:	
<b>JEFFREY A. BEARD, et al.,</b>	:	<b>(Electronically Filed)</b>
<b>Defendants</b>	:	

**CERTIFICATE OF NON-CONCURRENCE**

I, AMY ZAPP, counsel for defendants, hereby certify that I have contacted counsel for plaintiffs and have been advised that plaintiffs do not concur in the foregoing motion.



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**AMY ZAPP**

**Chief Deputy Attorney General  
Appeals & Legal Services Section  
Attorney I.D. No. 28065  
Counsel for DEFENDANTS**

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**Plaintiffs**

**v.**

**JEFFREY A. BEARD, et al.,**

**Defendants**

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:

**No. 1:08-CV-1261**

**(Chief Judge Kane)**

**(Electronically Filed)**

**CERTIFICATE OF SERVICE**

I, Amy Zapp, Chief Deputy Attorney General, certify that a true and correct copy of Defendants' Motion To Dismiss The Complaint has been served via first class mail as follows:

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